IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 9186 of 1999

Between:

HBN Chary, S/o.HB. Srinivasa Chary, aged 28 years,

Occ: Casual Labour, R/o.H.No.5-4-422/13, Risala Bazar,

Bollaram, Secunderabad.

..... PETITIONER

AND

1. The A.P.State Seeds Development Corporation Limited,

rep. By its Managing Director,

HACA Bhavan, 2nd Floor, Basheerabad, Hyderabad.

2. The General Manager, A.P.State Seeds Development Corporation

Limited, Regional Office, Jeedimetla Village, Ranga Reddy District.

3. The Govt. of A.P., rep. by its Spl.Secretary to Government,

Fin. & Planning Dept., Secretariat, Hyderabad.

(R3 is impleaded as per Court Order dt.9-3-2000 in W.P.M.P.No.23704/99)

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the Proc.No.SSDC/Admn/98-99, dt.11-08-1998 issued by Respondent No.1 and condition No.1 in G.O.Ms.No.212, Finance and Planning (PWP-II) Department, dt.22-04-1994 as illegal, unjust, contrary to law and violative of Article 14, 16 and 21 of Constitution of India and amounts to violation of principles of natural justice and victimization and unfair labour practice.

Counsel for the Petitioner: MR.A.RAJASEKHAR REDDY

Counsel for Respondent Nos.1 and 2: MR.V.AJAYAKUMAR

Counsel for Respondent No.3: G.P FOR FINANCE AND PLANNING

The Court made the following:

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the proceedings No.SSDC/Admn./98-99 dated 11.08.1998 issued by the first respondent and condition No.1 of G.O.Ms.No.212 Finance and Planning (PWP-III) Department, dated 22.04.1994, as illegal, arbitrary and violative of principles of natural justice.

It is the case of the petitioner that he was appointed as Office Boy in the A.P. State Seeds Development Corporation, duly sponsored through Employment Exchange and having subjected to interview, in the month of April, 1989 and has been continuously working as such, and when his services were not regularised inspite of the clear vacancies available in the cadre of Office Boy, he approached this Court and filed a writ petition being W.P.No.33468 of 1997. The said writ petition was disposed of directing the respondents to consider the case of the petitioner subject to fulfilling other eligible criteria prescribed under G.O.Ms.No.212, dated 22.04.1994. Inspite of such a direction being given by this Court, the respondents have rejected the case of the petitioner only on the ground that the petitioner did not satisfy the criteria of holding educational qualifications. The petitioner studied upto 7th Class but not passed the same, therefore, it was deemed that he did not satisfy the eligibility criteria of educational

qualifications and his case was rejected. Aggrieved by the same, the present writ petition is filed.

Heard both sides.

It is very curious to note that when W.P.No.33468 of 1997 was disposed of on 01.05.1998, this Court held as under: -

> "It is the case of the petitioner that he entered the service of the A.P. State Seeds Development Corporation Limited, 2nd respondent N.M.R in the year 1989 and when his services were sought to be terminated in the year 1995 by issuing the proceedings dt.05-08-1995 the petitioner filed W.P.No.25890/95 and this Court suspended the said proceedings and by virtue of the interim suspension the petitioner has been in continues service and subsequently that writ petition was also disposed of.
>
> The Supreme Court in THE DISTRICT COLLECTOR/CHAIRMAN and OTHERS Vs. M.L.SINGH and OTHERS (1) 1998 (2) ALT 5 (SC) while affirming the view taken by the Division Bench of this Court in W.A.Nos.603 to 405 of 1995 decided on 30-06-1995 held that the N.M.Rs are entitled to be regularized into service as and when they complete five years of continuous service, not necessarily completion of five years on the cut off date. The facts stated supra make it very clear that the petitioner has been continuously working as NMR from the year 1989. In that view of the matter he is entitled to be regularized in the service in terms of G.O.Ms.No.212, dt.22-04-1994.
>
> In the result, I allow the writ petition by quashing the impugned proceedings and I direct the respondents to regularize the services of the petitioner with effect from the date on which he had completed five years continuous service, subject to the petitioner fulfilling the other eligibilities prescribed under G.O.Ms.No.212, dt.22-04-1994. This direction shall be carried out within a period of three months. No costs.
>
> That Rule Nisi has been made absolute as above."

In pursuance of the aforesaid order of this Court, when the case of the petitioner was considered, the respondents found that the petitioner did not satisfy the criteria of prescribed educational qualifications and therefore, passed the following order:-

"In the reference cited 3rd, Sri.H.B.N.Chary has submitted his bio-data, according to which he possesses 7th class, his date of joining is 30-04-1989 and his date of birth is 14-06-1970. He has also enclosed a Xerox copy of marks sheet of 7th class common examination March'85 bearing Sl.No.144, according to which he has appeared for 7th class common examination held in March'85 from Z.P.H.School, Bolaram, and has failed in the examination. He has also enclosed a Xerox copy of Transfer Certificate No.16 issued by the Zilla Parishad High School, Bolaram, according to which he has studied 7th class but not qualified for promotion to higher class.

According to G.O.Ms.No.212 dt.22-4-1994 Sri.H.B.N.Chary has to fulfill the following conditions:

1. He should possess the qualifications prescribed as per rules in force as on the date from which his service have to be regularised.

2. He should be within the age limit as on the date of appointment as NMR/Daily Wage employee.

3. He should have completed 5 years of service as on 25-11-1993.

The qualifications possessed by Sri.H.B.N.Chary have been considered for the lowest post in the Corporation i.e., Watchman/Attender. The qualifications prescribed for Watchman/Attender is a pass in 7th standard. Sri.H.B.N.Chary has not passed 7th standard and is therefore not fulfilling the qualifications prescribed for the Watchman/Attender post i.e.7th class. As he does not possess the prescribed qualifications for the Watchman/Attender post, he is not fulfilling the eligibilities prescribed under G.O.Ms.No.212 dt.22-4-1994 and is therefore not entitled to regularization of his services."

But, it is not disputed anywhere that the appointment of the petitioner was through back door method or he was not sponsored through Employment Exchange or he was not appointed by a Competent authority. The only criteria the petitioner satisfied was that he had put in five years of service as on the date of considering his case for the purpose of regularization. Admittedly, as on the date of filing the earlier writ petition being W.P.No.33468 of 1997, the petitioner was

entitled to be considered in terms of G.O.Ms.No.212, dated 22.04.1994, and therefore, this Court directed the respondents to regularise the services of the petitioner with effect from the date on which he had completed five years of service subject to the petitioner fulfilling other eligible criteria under the said G.O. The respondents have now rejected the case of the petitioner for regularisation on the ground that though he studied upto 7th Class, he has not passed the same. As the petitioner did not satisfy the criteria of educational qualifications, he is not entitled to regularisation in terms of G.O.Ms.No.212, dated 22.04.1994.

Once the petitioner was sponsored through Employment Exchange in pursuance of a requisition made by the respondents and was subjected to interview and selection, and was later appointed, the question of deficiency of educational qualifications at this length of time does not arise. Further, the nature of duties to be attended by the petitioner was that of Watchman/Attender, the lowest post in the Corporation, which does not require any skills to be exhibited for discharging the duties in the office of the Corporation.

In this connection, the learned counsel for the petitioner has rightly relied upon the judgment of the Apex Court in **Bhagwati Prasad Vs. Delhi State Mineral Development Corporation** and drawn the attention of this Court to para No.6 of the judgment which reads as under:-

> "6. The main controversy centers round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard

> and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the seniormost workmen should be regularized with immediate effect and the remaining 118 petitioners should be regularized in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rs.10,000/- in the Registry of this Court within four weeks to meet the remuneration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs."

I am of the opinion that the said judgment squarely covers the issue as to the holding of educational qualifications by the petitioner, since the petitioner was appointed way back in 1989 and worked continuously for more than five years as on the date of rejection of his case for regularisation under the impugned proceedings.

For the foregoing reasons, I am of the considered opinion that the impugned order of the first respondent, rejecting the case of the petitioner on the ground that he did not satisfy the prescribed educational qualifications of passing 7th Class, is arbitrary and illegal.

In the result, the impugned order is set-aside and the respondents are directed to consider the case of the petitioner and reinstate him into service on regular basis in the cadre of

Watchman/Attender in the department with continuity of services but without any backwages and other attendant benefits.

The writ petition is allowed to the extent indicated above. No order as to costs.

_

_____

(C.V.RAMULU, J)

13.07.2005

DR

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Wednesday, the thirteenth day of July, Two thousand and Five

To

1. The Managing Director,

A.P.State Seeds Development Corporation Limited,

HACA Bhavan, 2nd Floor, Basheerabad, Hyderabad.

2. The General Manager, A.P.State Seeds Development Corporation

Limited, Regional Office, Jeedimetla Village, Ranga Reddy District.

3. The Spl.Secretary to Government, Govt. of A.P.,

Fin. & Planning Dept., Secretariat, Hyderabad.

4. Two CCs to the G.P for Finance and Planning, High Court of A.P.,

Hyderabad(O.U.T).

5. 2 CD copies

6. 1 CC to MR.RAJASEKHAR REDDY